

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

COUNTRY INNS & SUITES BY
CARLSON, INC.,

Plaintiff,

VS.

DONALDSON HOTELS, INC.,

Defendant.

Civil No. 10-cv-2037-RHK-FLN

REPORT AND RECOMMENDATION

This matter came on for hearing on January 5, 2012 on Plaintiff Country Inns & Suites By Carlson, Inc.'s Motion for Sanctions and/or Default Judgment (ECF No. 37) against Defendant Donaldson Hotels, Inc. due to its failure to respond to discovery and failure to participate in the civil trial process. The Court has carefully reviewed said Motion and the entire court file.

On October 5, 2011, the Court issued an order directing Defendant to retain new counsel on or before November 1, 2011. (ECF No. 34.) The Court cautioned Defendant that as a corporation it cannot proceed without representation by an attorney. *Ackra Direct Marketing Corp. v. Fingerhut Corp.*, 86 F.3d 852, 857 (8th Cir. 1996) (“[T]he law does not allow a corporation to proceed *pro se*.”); *see also* 28 U.S.C. § 1654. Defendant has not obtained new counsel. Additionally, Defendant has not responded to discovery requests originally served on February 4, 2011. (ECF No. 40, Reilly Decl.) The Court finds that Defendant Donaldson Hotels, Inc. has willfully and purposefully neglected this case and engaged in a pattern of sanctionable conduct that warrants an entry of default judgment pursuant to Rules 37 and 55 of

the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 37(b)(2)(A)(vi), 37(d)(3), and 55. Defendant's default should be entered.

Plaintiff also seeks a judgment against Donaldson Hotels in the amount of \$393,525.69. In order for a default judgment to be entered in a specific amount, the Plaintiff must file an affidavit showing that it is entitled to that amount. *See* Fed. R. Civ. P. 55 (b)(1). Although the complaint details the amount, both in the body of the complaint and in the exhibits attached, neither the complaint or the attachments are sworn statements. Plaintiff must file an affidavit by a person with knowledge, swearing to the facts that show it is entitled to the amounts plead in the complaint.

Based upon the foregoing, and all the files, records and proceedings herein, **IT IS HEREBY RECOMMENDED** that:

1. Plaintiff's Motion for Sanctions and/or Default Judgment (ECF No. 37) be **GRANTED** to the extent that Defendant's default be entered;
2. Plaintiff file an affidavit showing that it is entitled to a judgment in the amount of \$393,525.69, as requested by Plaintiff's Complaint; and
3. Plaintiff be awarded the attorneys' fees and costs it has incurred in bringing this motion. Plaintiff shall file an affidavit with this Court detailing the amount of the attorneys' fees, costs and disbursements it has incurred in bringing this motion within fourteen (14) days from the date of this Report and Recommendation; and
4. **JUDGMENT BE ENTERED ACCORDINGLY.**

DATED: January 24, 2012

s/ Franklin L. Noel
FRANKLIN L. NOEL
United States Magistrate Judge

Pursuant to the Local Rules, any party may object to this Report and Recommendation by filing with the Clerk of Court and serving on all parties, on or before **February 6, 2012**, written objections which specifically identify the portions of the proposed findings or recommendations to which objection is being made, and a brief in support thereof. A party may respond to the objecting party's brief within fourteen (14) days after service thereof. All briefs filed under the rules shall be limited to 3,500 words. A judge shall make a de novo determination of those portions to which objection is made.

Unless the parties are prepared to stipulate that the District Court is not required by 28 U.S.C. § 636 to review a transcript of the hearing in order to resolve all objections made to this Report and Recommendation, the party making the objections shall timely order and cause to be filed by **February 6, 2012**, a complete transcript of the hearing.

This Report and Recommendation does not constitute an order or judgment of the District Court, and it is, therefore, not appealable to the Circuit Court of Appeals.